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GATT 1993 AND THE FUTURE AGENDA

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August 1994



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Ottawa, Canada K1A 0S9

Catalogue No. YM32-2/387E
ISBN 0-660-15884-1

CE DOCUMENT EST AUSSI
PUBLIÉ EN FRANÇAIS

AWG 3764

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GATT 1993 AND THE FUTURE AGENDA

~~Trade has become progressively liberalized since the formation of~~ the GATT in 1947, and in most years it has led to growth in world output over the same period. While economists will debate whether trade has caused growth or the reverse, it seems undeniable that trade has been associated with the process of generating wealth. As for its non-economic effects, it is likely that trade does as much to structure our wider social order as it did for the ancients Greeks.⁽¹⁾

December 1993 saw the conclusion of the longest GATT negotiations to date. These negotiations had seemed on the brink of failure more than once, in view of the complexity of the issues involved. This paper puts these issues in perspective by providing the reader with some background on the GATT and its evolution over the years. It also reviews the major elements of the new agreement, emphasizing its impact on Canada and less developed countries and highlighting the issues that can be expected to affect future negotiations.

THE GATT'S BASIC PRINCIPLES

The General Agreement on Tariffs and Trade (GATT) is a multilateral trade agreement put in place after the Second World War to prevent the recurrence of the 1930s-style protectionism which had all but destroyed world trade. The GATT reflects a liberal view of trade based on the economic theory of comparative advantage; this holds that the overall level of wealth (or consumption) is increased when countries specialize in the production of goods for which they have lowest relative production costs. Each country exchanges its surplus production for goods that have lower relative production costs in other countries. According to this theory, a country's comparative advantage is based on its relative endowments of production factors such as natural resources, capital and labour.

(1) Gilbert R. Winham, *The Evolution of International Trade Agreements*, University of Toronto Press, Toronto, 1992, p. 10.

As is often the case with economic theory, this does not reflect the whole reality. For example, the comparative costs structure is not always static, as might be implied by the factor endowment theory. The emergence of powerful new trading nations in the Pacific Rim, for example, indicates that comparative advantage does change over time. The evidence also suggests that other factors, such as knowledge and technology, are also important in determining a country's comparative advantage. As a result, even in a perfect world where trade flowed unimpeded, continual adjustments would be needed as some national economies developed and others declined. The GATT is an attempt to establish an element of stability by providing rules to govern trade between nations, even though the nature of that trade may change. The following paragraphs briefly discuss the basic GATT rules.

A. Most Favoured Nation Treatment

The major principle of the GATT is the "most favoured nation" (MFN) treatment whereby an advantage accorded to one nation must also be granted to all other contracting parties. The GATT does, however, permit the creation of customs unions or free trade areas that introduce a discriminatory element into international trade. The number of such agreements, a recent example of which is the North American Free Trade Agreement, is increasing.

B. National Treatment

Another major principle is that of "national treatment," whereby goods imported from another country must receive the same treatment with respect to taxation and regulation as the same goods produced domestically. Both the MFN and national treatment principles are related principles of non-discrimination. The MFN treatment relates to external non-discrimination whereas the national treatment relates to internal non-discrimination.

C. Elimination of Quantitative Restrictions, Non-Tariff Barriers and Tariffs

Except in certain circumstances, quantitative restrictions are prohibited under the GATT whereas custom duties or tariffs are not. Tariffs are considered the lesser of two evils.

They are inherently more transparent than quantitative restrictions or other types of non-tariff barriers; they do not prevent the functioning of the price mechanism; and they at least allow the possibility of competition. A country can theoretically reduce its export price to compensate for the presence of a tariff. Thus, the first step is to replace quantitative restrictions and other non-tariff barriers by tariffs, which can then be reduced on a reciprocal basis through negotiations.

D. Reciprocity, Special and Differential Treatment

Reciprocity, another major principle of the GATT, is a loosely defined concept whereby concessions on tariffs and other trade barriers by one party must be matched by concessions by the other party. The GATT was later amended to allow the "special and differential treatment" of developing countries to acknowledge that their level of development does not always allow them to reciprocate with respect to the concessions of developed western countries.

EVOLUTION OF THE GATT

The five rounds of GATT negotiations between 1947 and 1961 resulted in a new agreement every three years or so. The Kennedy Round, which started in 1963, required four years of negotiations to achieve completion in 1967. The Tokyo Round began in 1973 and was not completed until 1979. A substantial amount of time elapsed before the Uruguay Round was undertaken in 1986. The final agreement was reached seven years later, in December 1993, and the *Final Act* was signed by participating countries in April 1994. The negotiations had seemed poised on the brink of failure a number of times on issues related to agricultural export subsidies, aircraft subsidies, and the audio-visual sector.

The greater time required to complete each round of negotiation reflects both the increasingly complex issues under discussion and the evolution of the bargaining process itself. The number of participating countries is now 124, compared with the original 25. The first five rounds of negotiations dealt mainly with tariff reductions, with the exception of the negotiation of an anti-dumping agreement.

During the sixth (Kennedy) round, the European Economic Community made its first appearance as a negotiating bloc, though the U.S. remained the dominant world economy. An important development was the adoption of Part IV of the Agreement, containing articles dealing with trade and development and the exemption of developing nations from reciprocating where concessions would be inconsistent with their development objectives. This was important because it helped to increase the participation of developing countries in the GATT. Until then, their participation had been relatively minimal, because the GATT had been mainly concerned with tariff reductions, where the size of the reduction is determined by the amount of trade it affects, an area in which developing countries had relatively little to offer. In the 1980s, the GATT achieved importance among developing countries as they began to accept the notion of trade as a vehicle for economic development.

During the Tokyo Round, the entry of Great Britain into the European Economic Community's trading bloc resulted in largely bi-polar negotiations between the U.S. and the EEC on such issues as subsidies, government procurement and customs valuation, in addition to tariff issues. The developing countries, emerging as a negotiating bloc during the Tokyo Round, were able to have an impact on the negotiations and obtain some measure of "special and differential" treatment, continuing a trend that had begun in the Kennedy Round.

During the Uruguay Round, to the tri-polar world economy composed of three economic giants (U.S., Europe and Japan) was added yet another trading bloc as a result of the North American Free Trade Agreement, preceded by the Canada-U.S. Free Trade Agreement. The question now is whether trade multilateralism will be replaced by managed trade among the world's trading blocs.

The dominance of the Uruguay Round by the three giants led to the creation of coalitions such as the Cairns Group, where countries such as Canada and Australia were united in their objective of ending the U.S.-Europe agricultural trade war with its devastating effects on international agricultural prices. On the other hand, the Third World coalition, known as the Group of 77, created in the mid-1960s, started to show signs of fraying. Although developing countries continued to act as a negotiating bloc pursuing "special and differential" treatment, the diverging interests of these countries became more apparent during the Uruguay Round; in particular, divergence was evident between very poor countries and so-called newly

industrialized countries (NICs). Quite a number of NICs, including Taiwan, South Korea, Singapore, China, Brazil and Mexico, are now among the top 25 world exporters. Such countries are using the export of manufactured products as a development vehicle and clearly have a much bigger stake in the outcome of negotiations on investment, services and intellectual property rights than do the least developed countries, which are highly dependent on exports of raw commodities.⁽²⁾

THE MAJOR ELEMENTS OF THE 1993 GATT ACCORD

A. A World Trade Organization

Initially, the GATT was envisioned as a provisional agreement which was to be incorporated into the charter of an International Trade Organization. It was mainly the failure of the U.S. Congress to ratify the ITO agreement that left the GATT standing on its own as an independent legal instrument. In 1955, another attempt to create an international trade institution also failed. Thus, the GATT developed a dual nature; it was a legal instrument codifying a set of international trade rules and thus a means of settling trade disputes, and it was also a forum for multilateral trade negotiations. The GATT is often termed an international trade regime, suggesting an international form of government but without the strong institutional structure that this implies.

The creation of the World Trade Organization (WTO) considerably strengthens the GATT as an institution by providing it with a single institutional framework to replace the GATT secretariat set up rather informally in 1948. WTO is a considerable achievement of the Uruguay Round and it is worth noting that Canada played a major role in proposing its creation.

The governing body of the new WTO will be a ministerial conference taking place every two years. A General Council will oversee the operation of the agreement and implement the decisions of the ministerial conference. Various subsidiary councils will be established: a Goods Council will oversee merchandise trade issues, a Services Council will oversee the implementation of GATS (General Agreement of the Trade of Services), while another council

(2) Jock Finlayson, *The End of the South? Developing Countries and International Trade Regimes in the 1990s*, Centre for Trade Policy and Law, Carleton University, Ottawa, 1992, p. 10.

will oversee the implementation of the agreement on TRIPs (Trade Related Aspects of Intellectual Property Rights).

B. Agriculture

During the Uruguay Round, there were a number of important developments with respect to agriculture. The parties agreed to replace import bans and quotas by import duties and to reduce by an average of 20% any government agricultural supports that increase production and create surpluses. There was also an agreement on the reduction of export subsidies.

A major development affecting Canada will be the replacement, by July 1995, of import quotas with tariffs in agricultural sectors using supply management techniques. The sectors affected by the agreement will be dairy, poultry and egg production, where the tariffs have been calculated on the basis of equivalency of protection. As a result, Canada will impose tariffs in the order of 235% to 350% on dairy products and from 180% to 280% on poultry products. These tariffs are to be reduced by a minimum of 15% over a six-year period, during which adjustments may be made to the agricultural sectors affected. One question is whether the introduction of these new tariffs will contravene the NAFTA, which prohibits Canada from introducing tariffs on trade with its continental trading partners. The U.S. is a major source of competition for Canadian dairy and poultry products.

The other important development for Canada is the agreement whereby the amount of agricultural export subsidies is to be reduced by 36% and the volume of subsidized exports is to be reduced by 21%. Over the past 10 years, the U.S. and EC have been engaged in an export subsidy war which has profoundly depressed world wheat prices and considerably affected Canada's wheat exports. The higher world prices expected as a result of the new agreement will benefit Canada and other wheat exporters but will negatively affect those developing countries that are net food importers. The possible negative effects of reform of agricultural trade on such countries was acknowledged in the agreement and an understanding was reached on specific alleviating measures, including increased food aid and better access to IMF and World Bank financing facilities.

The agreement on agriculture has been characterized as providing a framework for the long-term reform of agricultural trade and related domestic policies. A committee will monitor the implementation of the agreement, including actions to counter its possible negative effects on net food importing countries. The results of the agreement are to be assessed in five years and further negotiations on agriculture are to be undertaken in the fifth year.

C. Textiles and Clothing

In the textiles and clothing sector, restrictive quotas (voluntary export restraints or VERs), have been used by developed countries like Canada to limit textile and clothing imports from developing countries. These quotas, negotiated under the Multi-Fibre Arrangement or MFA, have enabled developed countries to circumvent the GATT to protect their labour-intensive industries from goods originating in developing countries with low labour costs. This was supposed to lead to more rapid adjustment in these sectors but adjustment has been characterized by more capital-intensive modes of production, which have slowed down the displacement of workers from these industries but have not prevented it. The textiles and clothing sector is a good example of how a comparative advantage in an industrial sector with a low capital-labour ratio can change over time.

Over the next 10 years, after restrictions have been phased out gradually in three stages, trade in such products will be governed by the general rules of the GATT and may be the subject of future tariff reduction negotiations. In the meantime, the agreement provides for a Textiles Monitoring Body to oversee the implementation of the agreement and for a specific safeguard mechanism.

D. GATS (General Agreement on Trade in Services)

The three-part General Agreement on Trade in Services is the first agreement to bring trade in services into the framework of the GATT; it applies the MFN and national treatment principles to the service markets of contracting parties. The agreement spells out the basic obligations of the parties; for example, the members are committed to apply to trade in services the principles of non-discrimination (both internal and external), transparency (e.g.,

publication of relevant regulations), and reciprocity. Annexed to the agreement are countries' specific obligations and rights with respect to financial services (banking and insurance), telecommunications, the movement of labour for the provision of professional and business services, and air transportation. There are specific commitments to eliminate regulations restricting access to a nation's services market and discriminating against foreign service providers; ~~examples include limitations on the number of foreign service providers, on the~~ maximum value of services transactions carried out by foreign providers, and on maximum levels of foreign participation in joint-ventures. Measures such as those to ensure the financial soundness of foreign services institutions establishing themselves in a market would not be prohibited, however. The agreement stipulates progressive liberalization in the services industries through negotiations and the development of national schedules. Countries will have the right to withdraw from the commitments in these schedules, subject to compensatory adjustments in other areas.

E. Trade-Related Intellectual Property Rights (TRIPS)

This agreement sets out the obligations and rights of the contracting parties with respect to intellectual property rights for such things as ~~copyrighted audio-visual products~~, computer software, trademarks, indications of the geographic origin of goods, industrial designs, patents and so on. The application of national treatment and MFN to intellectual property rights, the latter being a novel aspect of international intellectual property agreements, is included. The agreements build on various international conventions already dealing with this subject, such as the 1967 Paris Convention on patents and the Berne Convention for the protection of artistic works such as books and films. The contracting parties undertake to implement and enforce domestic laws related to the protection of copyrights, trademarks and patents. Countries will have various amounts of time to implement the agreement, depending on their level of development; developed countries will have up to one year, while the previously centrally planned countries will have five. The 11-year transitional period for the less developed countries recognizes their special need for maximum flexibility in the implementation of intellectual

property rights laws and regulations, in light of their objective of developing a viable technological base.

F. Trade-Related Investment Measures (TRIMS)

This agreement concerns measures to limit imports contravening the principle of national treatment and the prohibition of quantitative restrictions. Such measures, which include domestic sourcing requirements (the requirement to use locally produced goods in manufacturing operations) as well as import substitution policies and trade balancing requirements (where the amount of a company's imports is contingent on the level of its exports), are used mainly by developing countries to stimulate their economic development. Such measures, which are protectionist in nature and distort trade flows, are to be eliminated over a two-year period in developed countries and over a five-year period in developing countries. The agreement provides for later consideration of more broadly based negotiations on investment and competition policy.⁽³⁾ The TRIMS agreement has been criticized as a hindrance to developing countries seeking to control their development. It has also been described as a minimalist type of agreement that may lead to further negotiations on more complex issues. According to one commentator, the TRIMS agreement "has shown that many governments are simply not ready to accept new limitations on their ability to regulate foreign investment without some counterpart regulation of multi-national companies. In the future, interested governments may push for more far-reaching negotiations on this subject."⁽⁴⁾

G. Subsidies and Countervailing Measures

The 1993 GATT agreement established a more precise definition of a "subsidy," depending on whether it is made available to a firm, a group of firms or to all firms in an industry. The agreement establishes three categories of subsidies and makes them subject to

(3) GATT Secretariat, "Final Act of the Uruguay Round - Press Summary," Reprinted in *The World Economy*, Vol. 17, No. 3, May 1994, p. 376.

(4) Nicholas Hopkinson, *Trading Blocs and the Future GATT Agenda*, Wilton Park Paper No. 76, HMSO Publications, London, October 1993, p. 12.

certain disciplines. The first category covers prohibited subsidies, i.e., those contingent on export performance or import substitution. Prohibited subsidies must be withdrawn immediately or else be the subject of countervailing measures whether or not the complainant has been injured. Varying timetables are set out for the elimination of such subsidies depending on a country's level of development. The second category consists of actionable subsidies (those that cause injury to a party to the agreement). The third category includes non-actionable subsidies, including subsidies for regional development and research.

H. Anti-Dumping

The 1993 GATT agreement includes a more precise definition of "dumping" (exporting below cost) as well as more stringent guidelines on how to determine whether dumping is actually taking place. The complainant is required to establish a clear relationship between the dumping and injury to its industry. These new definitions and procedures for investigations represent an attempt to eliminate frivolous complaints intended to harass foreign suppliers.

I. Dispute Settlement Mechanism

The 1993 GATT agreement includes an Understanding on Dispute Settlement (DSU) which strengthens the GATT's present mechanism. To this effect, it provides for shorter dispute settlement timetables; this should limit the use of delaying tactics by the offending parties. Panel arbitration decisions on disputes should carry more authority, which should limit the use of unilateral sanctions by the injured contracting parties as a result of their own interpretations of the GATT.

A Dispute Settlement Body, acting under the authority of the General Council and its subsidiary councils, will implement the DSU. An offending party must consult with the complainant within 60 days, barring which the complainant may request the establishment of a panel. If within 20 days there is no agreement on the composition and terms of reference, the DBS will decide on these. The panel will rule on the dispute within six months and its report will be adopted by the DSB within 60 days, unless it rejects the panel's findings by consensus

or one of the parties gives notice that it intends to appeal to an appellate body, a new possibility under the GATT. The decision of the appellate body is to be unconditionally accepted by the parties unless the DSB rejects it by consensus.⁽⁵⁾

J. Government Procurement

The 1993 GATT agreement also addresses the question of government procurement. Consultations between present members and new applicants will make it easier for developing countries to become part of the existing agreement on government procurement. (Countries become members by agreeing to open their government's procurement to international competition, subject to review by existing members.) Negotiations are taking place on extending the existing agreement to services and applying it to sub-national levels of government.⁽⁶⁾

K. Global Economic Policy-Making

One of the by-products of the Uruguay Round was a ministerial declaration "Achieving Greater Coherence in Global Economic Policy Making." At the onset of the Uruguay Round in 1986, some countries were calling for negotiations on what was perceived as a growing disequilibrium in world trade. These concerns were related to the value of the U.S. dollar and the size of the U.S. deficit at that time. Also, European countries expressed concerns about the volatility of exchange rates.⁽⁷⁾ Some economic theorists claim that the full benefits of free trade depend on equilibrium exchange rates, which international speculation, in which short-term capital constantly chases the highest returns, makes nearly impossible to achieve. They therefore argue that it is totally non-productive to pursue trade liberalization through the GATT in total isolation from the activities of the IMF, which manages balance-of-payments problems.⁽⁸⁾ While it is doubtful that the world will ever again see widespread fixed

(5) GATT Secretariat (1994), p. 389-391.

(6) *Ibid.*, p. 392.

(7) Hopkinson (1993), p. 12.

(8) Maurice Allais, "Free Trade Policy, GATT and the European Construction," *Revue d'économie politique*, 104(1), January-February 1994, p. 17.

exchange rates, the closer integration of world economic institutions such as the GATT and the IMF may become increasingly important.

L. The Safeguard Mechanism and Other Aspects of GATT 1993

The GATT contains a mechanism whereby, as a safeguard against injury to its domestic industry, a member country is allowed to place temporary restrictions on imports, irrespective of their source. Under the new arrangement, such measures cannot be prolonged indefinitely and the conditions under which a determination of injury can be made are stricter. Safeguards cannot be applied to developing countries with a relatively small share of the injured party's domestic market. On the other hand, developing countries are allowed to extend safeguard measures for a longer period than developed countries.⁽⁹⁾

Other aspects of the 1993 GATT agreement are related to non-tariff barriers, phyto-sanitary measures and regulations, rules on the origin of goods, etc. The Uruguay Round also led to the elimination of tariffs in pulp and paper products, pharmaceuticals, beer, steel, construction and agricultural equipment and office furniture. Tariffs in remaining sectors are to be reduced by an average of one third by the end of the decade.

THE FUTURE GATT AGENDA

A. Increasing Regionalism

While most analysts agree that the emergence of trading blocs is very important for the future evolution of the GATT, there are three different views of their effect.

The first view, which we can describe as optimistic, is that the forces pushing towards multilateral liberalization of trade are irreversible and that the GATT can only be strengthened by the new regional free trade arrangements, which have quite a different basis from similar arrangements set up in the protectionist 1930s. The preferential trading arrangements of that period, such as the British Commonwealth tariff of 1932, were designed to counter the United States Smoot-Hawley tariff increase of 1930, rather than to liberalize trade;

(9) GATT Secretariat (1994), p. 382.

they thus tended to exclude the possibility of inter-regional trade. The current free trade arrangements can be seen as complementing multilateral trade:

Although European countries do 75% of their trade with one another, external markets are still important. North America and Asia send two thirds of their exports outside their respective regions. Overall, only 40% of all world trade is intra-regional. The U.S., Europe and Japan know they must preserve extra-regional trade because it represents 11% of the U.S.-Canada GNP, 13% for Western Europe and 22% for Japan and Asia.⁽¹⁰⁾

Indeed, the new regional arrangements generally go beyond the GATT with respect to liberalization of trade and thus complement multilateral trade.

A second view of the new regional trading blocs, which we can describe as pessimistic, is that they are a prelude to greater protectionism linked to a slower-growing world economy. In a slow-growth context, the competition for export markets becomes fiercer and the use of export enhancement strategies increases; the creation of regional trading agreements can be seen as such a strategy. The proponents of this view contend that regional trading arrangements between countries of similar development levels (for example the European Community) are motivated by the desire to gain the benefits of free trade, such as economies of scale, while avoiding its disruptive effects, such as the readjustment of wage levels. This view contends that trade between regional blocs will increasingly be managed through the use of non-tariff barriers, while intra-regional trade becomes freer. Examples of internationally managed trade to date are the Multi-Fibre Arrangement in the textile and clothing industry, the agricultural sector, the automobile industry, and agreements in the semi-conductors sectors. According to this view, such trade, managed intra-regionally, will become the norm rather than the exception in world trade, notwithstanding the achievements of the latest GATT round. As mentioned earlier, the GATT did achieve progress in the textile and clothing sector and in some sectors of agriculture, by replacing non-tariff barriers by tariffs.⁽¹¹⁾ In a number of sectors, such as automobiles and semi-conductors, non-tariff barriers remain, however, and will need to be dealt with in the context of the GATT.

(10) Hopkinson (1993), p. 6.

(11) Lester C. Thurow, "GATT is Dead," *Journal of Accountancy*, Vol. 170, No. 3, September 1990.

The third view, which can be described as neutral, is that, although regional trading arrangements are generally inward-looking, their impact on multilateral trade will largely depend on whether they divert existing trade or create new trade:

Regional arrangements will make the world better off in the short-term if the amount of trade created exceeds the amount diverted. A regional arrangement creates trade if it encourages a member to import from any other member what it previously would have made at home. Regional arrangements divert trade to less efficient producers if one member imports from another what it previously bought from an extra-regional country. The GATT rules on this point are weak; it would be better if GATT insisted that regional members set a common external tariff at the lowest level applied by any one of the members before the union was formed.⁽¹²⁾

This would minimize the trade-distorting effect of regional trading arrangements. The GATT may have to address such questions or risk becoming irrelevant in the new world trading system.

In a fast-growing world economy, the proponents of protectionism are few. In a slow-growing economy, however, the reverse is true. Yet, ironically, it is in the context of slow growth, where more efficient allocation of resources can have most impact on raising incomes, that liberalization of trade becomes most important.

B. Labour Standards

During the preparatory discussions of the Uruguay Round, the U.S. Administration raised the question of labour standards and workers' rights; however, developing countries objected to this:

The call arose for a social clause in GATT that would link respect for international human rights in the workplace, as laid down by the UN or the International Labour Organization, to access to the World's free trade market. ... In 1995, the UN will hold an international social summit at which these questions will be discussed. David Hunt, the British Minister of Labour, has gone on record saying that the time has come for what he calls a

(12) Hopkinson (1993), p. 6.

"World Social Charter" to cover basic health and safety standards.⁽¹³⁾

In developed countries, labour issues are intrinsically linked to trade and protectionist measures are often the result of a desire to protect jobs and wage levels at least during a so-called adjustment period. On a more general level, opponents to protectionism often argue that free trade results in the equalization of wages by reducing them in developed countries and increasing them in developing countries. In theory, free trade will, however, equalize only the difference not reflected in productivity levels. As a result, it is generally accepted in developed countries that free trade, while producing an overall increase in wealth, may negatively affect the less qualified segment of the labour force.

Developing countries oppose linking labour standards to trade. They fear that this might harm their own competitive position, while giving developed countries a very effective means of protectionism, since they could impose trade sanctions on goods produced without consideration of minimal labour standards. Moreover, developing countries are reluctant to accept infringements on their sovereignty.

The differences in wages and labour standards between developing and developed countries are, however, generally so great that setting minimal standards on such things as child labour and minimal worker health conditions would not seriously damage the competitive position of labour-intensive industries in less developed countries. Wage levels are a separate issue, since they are subject to adjustment in all countries as a result of the economic forces brought into play by the liberalization of trade. However, even if labour standards were to include minimum wage standards, the purchasing power of such wages would be greater in less developed countries; thus, minimum wages could be much below those in developed countries yet still provide an acceptable standard of living. It is also generally agreed that the use of trade sanctions to enforce labour standards would be counter-productive as it would discourage development.

(13) Denis MacShane, "Now We Have Trade Rules for Everything but People," *The Toronto Star*, 19 December 1993.

Currently, the only link between labour issues and the GATT is that countries are permitted to ban the import of products made by prisoners.⁽¹⁴⁾ The GATT will eventually, however, have to deal with the question of worldwide labour standards. According to one author, labour and environmental concerns have become trade issues just like unmanaged subsidies, intellectual property and competition policies, all of which were eventually the focus of a coordinated international approach.⁽¹⁵⁾ It is now more a question of when rather than whether the GATT will deal with labour issues and the solutions will have to satisfy the developing countries.

One possibility would be the development of an international labour standards code for multinational corporations. A trendsetter in this area is Levi Strauss, which has adopted codes for the treatment of its workers in poor countries.⁽¹⁶⁾ This example shows that the interests of transnational corporations and the local labour markets in developing countries need not necessarily conflict.

Another possibility would be to strengthen the ILO (International Labour Organization) and to integrate it more closely with GATT. The creation of the WTO offers new opportunities in this area, since it could make fair labour standards an objective of the trading system and, and jointly with the ILO, develop minimum standards applying to goods produced for trade. A moratorium on trade sanctions to enforce such standards could be put in place for a fairly long period to allay the concerns of developing countries and encourage their participation.⁽¹⁷⁾ The U.S. Administration, which raised the subject of workers' rights during the preparatory discussions in 1986, is likely to keep pressing for the inclusion of labour standards under the WTO, notwithstanding the objections of developing countries.

(14) Article XX of the GATT provides for a number of general exceptions, including one that asserts the right of the contracting parties to implement non-discriminatory measures related to the products of prison labour. See General Agreement on Tariffs and Trade, *Basic Instruments and Selected Documents*, Geneva, March 1969, p. 37-38.

(15) Steve Charnovitz, *The WTO and Social Issues*, Paper for a Conference on "The Future of the Trading System," University of Ottawa, May 1994.

(16) MacShane (1993).

(17) Charnovitz (1994), p. 22.

C. Environmental Issues

Environmental issues will be a, if not the, major issue in a future round. GATT's interest in the environment is recent, dating primarily from the 1991 GATT panel decision which condemned U.S. restrictions on imports of Mexican tuna caught by methods which endanger dolphins (a protected species in the U.S.).⁽¹⁸⁾

Currently, Article XX of the GATT specifies situations in which trade controls can be used for the protection of human, animal or plant life or health (phyto-sanitary measures) and for the conservation of exhaustible natural resources. Such measures must not, however, discriminate among foreign trading partners or be disguised non-tariff barriers. Also, trade control measures for the conservation of exhaustible natural resources must be implemented in conjunction with domestic production or consumption controls. Article XX of the GATT was written in 1947, when environmental protection and sustainable development were not issues of the day. However, over the 40-odd year history of the GATT, the notion of protection of life and exhaustible resources has come to encompass environmental measures. Its effectiveness with respect to environmental issues depends on its interpretation in the case law.

There is the danger that Article XX will be eviscerated through interpretation and that this makes the GATT appear to be an obstacle to environmental progress. If the greening of the GATT means that the Contracting Parties should respect environmental objectives in administering Article XX, then greening is a good idea. But if it means that the contracting parties should subordinate economic goals to ecological imperatives, then greening is a bad idea, both for the GATT and for the environment. It is a bad idea for the environment because the GATT does not have the scientific expertise to judge what ecological measures are appropriate. It is a bad idea for the GATT because environmental policy would be too divisive for the GATT's current decision-making structure.⁽¹⁹⁾

(18) Hopkins (1993), p. 13.

(19) Steve Charnovitz, "Exploring the Environmental Exceptions in GATT Article XX," *Journal of World Trade*, October 1991, p. 55.

In this respect, the creation of the WTO may offer the opportunity for aligning the GATT and international trade to the imperatives of ecological policy and sustainable development. In 1991, the GATT revived its Environment Working Group, which had been created a number of years before but had never actually met. It was given the task of examining the relationship between the trade provisions of multilateral environmental agreements and the GATT, the transparency of national environmental regulations affecting trade, and the effect of pro-environmental packaging requirements.⁽²⁰⁾ The GATT will eventually have to balance the ecological and trade imperatives outlined in the following paragraphs, which summarize current debate on this issue.

Environmental matters raise much the same problems as labour standards. On the one hand, developing countries fear they could be used to justify restrictions on their trade and development. On the other, environmental concerns have made much headway in developed countries, where businesses increasingly accept environmentally sound practices as a cost of doing business. Environmental issues have two advantages over labour issues as far as trade is concerned: first, domestic environmental policies, or lack of these can affect global conditions;⁽²¹⁾ second, environmental concerns carry increasing weight in industrial democracies.

Environmentalists oppose free trade because it generates growth, which can lead to environmental degradation. In a nutshell, because countries with low environmental standards do not take into account the cost of polluting, their production costs are lower. There are also transnational effects when pollutants are carried by a river through more than one country or when dangerous wastes are exported or dumped on the high seas. Environmentalists argue that compensatory tariffs on countries whose industries do not bear pollution costs are acceptable. Free trade proponents argue that use of trade sanctions to enforce the environmental standards of developed countries would not only be unfair but would threaten the stability of the international trading system, which is a major objective of the GATT.

(20) C. Thomas and G. Tereposky, "The Evolving Relationship between Trade and Environmental Regulations," *Journal of World Trade*, August 1993, p. 23.

(21) Charnovitz (1991), p. 5.

Proponents of free trade argue that the best way to ensure environmental protection is through the liberalization of trade. More wealth would be generated and would eventually result in the upward harmonization of environmental standards with those of the developed countries. International harmonization itself presents difficulties such as securing and enforcing an international agreement when there is such diversity in existing regulations and in the absorptive capacity of environments.

Environmentalists consider the suggestion that growth will lead to higher environmental standards to be wishful thinking. They argue that the world ecosystem has not the capacity to sustain such growth, particularly in light of expected population increases. In the meantime, they claim, international investment would focus on countries with the lowest environmental standards, which would lead to competitive deregulation and to irreversible damage to the global ecosystem.

Free traders counter that this is unlikely, chiefly because the cost of complying with environmental regulation is not a sufficiently high proportion of total cost to be the crucial determinant of location. They believe that, in a world of rising environmental standards, transnational corporations will become aware of the potential liabilities of ignoring such standards (e.g., as in the Bhopal disaster in India).⁽²²⁾ Environmentalists, on the other hand, suggest that the combined savings from lower labour costs and lower environmental standards may together be sufficient to determine location and constitute a recipe for environmental disaster.

This endless debate highlights the difficulties involved in reconciling trade and environmental imperatives. The chances of a single international blanket agreement on upward harmonization of environmental standards within the context of the GATT are virtually nil. What may be possible is the negotiation, outside the GATT, of a number of more limited agreements on urgent issues. An example of such an agreement is the Montreal Protocol which bans the import and use of virgin chemicals (such as chlorofluorocarbons) that deplete the ozone layer. Within the context of the new World Trade Organization, the best that can currently be hoped for is the "greening" of the GATT. The revival of the Environmental Working Group

(22) World Bank, *International Trade and the Environment*, Patrick Low, ed., Washington, 1992.

gives some hope that the WTO will be sensitive to environmental issues and acquire the expertise to deal with them effectively.

D. Export Enhancing Strategies, Competition Policy

This segment of the paper describes the trends in international trade strategies employed by various countries over the past two decades.⁽²³⁾ These strategies have been a major cause of the shift from multilateralism to regionalism and of other developments that have affected the GATT. New or strategic international trade theory challenges traditional views or even contradicts them, particularly as they relate to comparative advantages. The theory of comparative advantage still underlies the thinking of most economists, but strategic international trade theory envisages comparative advantage as "man-made" or "policy-based," rather than based on natural endowments:

New international trade theory suggests that a nation can significantly alter its comparative advantage and hence its world trading position. As determinants of comparative advantage, this theory stresses R&D and technology, product life cycles, economies of scale, and the strategies pursued by enterprises possessing oligopolistic and monopolistic market power. The ability to manipulate these levers, according to the advocates of new international trade theory, allow nations to shape and amend their comparative advantage.⁽²⁴⁾

In essence, strategic trade is the application of national policies similar to those used by individual companies to obtain a greater share of the national marketplace. These national policies are, of course, competing for a bigger share of the international marketplace. Japan provides a classic example of how a national strategy, such as government targeting of the development of high-tech industries, can be used to bolster international trade performance:

During the late-1940s, a heated debate took place within the Japanese government over industrial development strategies. Bank

(23) F.M. Sherer and R.S. Belous, *Unfinished Tasks: The New International Trade Theory and the Post-Uruguay Round Challenges*, British North-American Committee, Issue Paper No. 3, May 1994.

(24) *Ibid.*, p. 7.

of Japan economists argued that Japan should take advantage of its abundant low wage labour and emphasize the production of textiles and ceramics. Ministry of International Trade and Industry representatives argued that if this route was chosen, Japan would remain underdeveloped and that only by embracing new advanced technologies in which Japan had no immediate comparative advantage could Japanese industry develop and join the ranks of the leading industrialized nations. The technology-forcing strategy was chosen and the rest is history.⁽²⁵⁾

Strategic theory holds a highly competitive view of international trade, with the objective being to obtain an advantage over one's trading partners. This often leads to use of countervailing strategies by other countries, which in turn prompt adjustment or strengthening of the initial strategy. Examples of particular strategies used by nations to enhance their international trade performance include: subsidizing exports of particular commodities, export financing and insurance, allocation of scarce resources to successful export-oriented industries, protecting the home market to achieve initial economies of scale, industrial and/or commodity cartels, dumping, provision of government-owned raw materials at low costs, and R&D subsidies. One can see that such policies may impact on competition policy, which is concerned with the behaviour of firms, as seen in the formation of cartels, public monopolies and so on. One can also see that it would be difficult to achieve a multilateral agreement in such an area because the issues of national sovereignty and the extra-territoriality of national laws are very directly involved. Nevertheless, this is an area that the GATT may eventually have to address, since:

A common approach is needed given the increasing globalization of markets. As long as the world lacks credible rules on competition, governments will continue to resort to grey area measures to protect industries. A global competition policy can prevent protection before it starts. For example, many Americans believe that Japan's *keiretsu* system [companies with interlocking ownership] could be among the first subjects for investigation under a global competition policy, in the hope of increasing their access to the Japanese market.⁽²⁶⁾

(25) *Ibid.*, p. 25.

(26) Hopkinson (1993), p. 21-22.

National export enhancement strategies have proliferated over the past two decades and have contributed to the distortion of trade flows. This problem must be dealt with within the context of the GATT, as tariff barriers become less important than non-tariff barriers. The recent GATT round has succeeded in dealing with some of these issues, for example, the Euro-American agricultural subsidy war, and also, to some extent, with non-traditional trade issues, such as trade in services, intellectual property, and trade-related investment measures. These agreements are, however, so far initial steps based on the lowest common denominators. The future of the GATT will depend on its ability to deal further with such non-traditional trade issues:

Economically rational definitions must be provided for what constitutes dumping when there is substantial learning by doing and when a recession induces industry participants to set prices below fully allocated unit costs.

The progress achieved in limiting agricultural and R&D subsidies must be extended.

What comprises "subsidy" in the provision of government-owned natural resources must be defined with greater precision.

There must be strenuous efforts to reduce non-tariff barriers such as buy-at-home preferences, the establishment of trade-distorting product quality standards, and the closure of distribution channels. Some of these may best be resolved in the context of broadly agreed-upon multilateral competition policy rules.

Multilateral competition policy agreements should delimit the permissible operating bounds for cartels and other restrictive agreements with trade distorting effects.



National policies governing foreign direct investment must be harmonized.

The coverage of multilateral trading rules must be extended to service and financial industries.⁽²⁷⁾

(27) Sherer and Belous(1994), p. 44-45.

CONCLUSION

While the conclusion of the Uruguay Round was greeted with tremendous enthusiasm worldwide, a review of the unresolved issues may temper that enthusiasm. Much of the analysis of the recent round was devoted to identifying winners and losers but there was also a feeling that ~~"any agreement is better than no agreement"~~ since another outcome would have led to the further deterioration of the multilateral trading system. It should be stressed that the new agreement succeeded in many areas where other negotiating rounds had failed, not the least being in its creation of the WTO. The agreement also succeeded in bringing into the context of the GATT a number of new areas, such as services (GATS), intellectual property (TRIPS), investment measures (TRIMS), and agriculture, clothing and textiles. Much remains to be done for the liberalization of trade in some sectors, particularly agriculture; here further subsidy cuts and rationalization of domestic support policies are needed to prevent international trade problems. Negotiations must also be pursued in the area of services. The GATT will have to tackle increasingly numerous, complex and new issues, such as labour standards, the environment, and competition policy. Since many of these new issues will be seen as impinging on national sovereignty, the road ahead could be rough.

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